

Kosilek v. Spencer

United States Court of Appeals for the First Circuit
February 12, 2014, Entered
No. 12-2194

Reporter: 2014 U.S. App. LEXIS 2660

MICHELLE KOSILEK, Plaintiff, Appellee, v. LUIS S. SPENCER, Commissioner of the Massachusetts Department of Correction, Defendant, Appellant.

Prior History: [*Kosilek v. Spencer*, 2014 U.S. App. LEXIS 951 \(1st Cir. Mass., Jan. 17, 2014\)](#)

Counsel: [*1] For MICHELLE KOSILEK, Plaintiff - Appellee: Michelle Kosilek, MCI Norfolk, Norfolk, MA; David Isaac Brody, Law Office of Joseph L Sulman, Boston, MA; Christina Y. Chan, Jared A. Craft, Bingham McCutchen LLP, Boston, MA; Joseph L. Sulman, Boston, MA.

For EQUALITY MAINE, GAY & LESBIAN ADVOCATES & DEFENDERS, HUMAN RIGHTS CAMPAIGN, MASSEQUALITY, MASSACHUSETTS TRANSGENDER POLITICAL COALITION, NATIONAL CENTER FOR TRANSGENDER EQUALITY, NATIONAL GAY & LESBIAN TASK FORCE, TRANSGENDER NEW HAMPSHIRE, Interested Party - Amicus Curiae: Bennett H. Klein, Jennifer L. Levi, Gay & Lesbian Advocates & Defenders, Boston, MA.

For MA DEPT. OF CORRECTION, KATHLEEN DENNEHY, Defendants: Joan T. Kennedy, Richard Charles McFarland, MA Dept of Corrections, Legal Division, Boston, MA.

For CORRECTIONAL MEDICAL SYSTEMS, Defendant: Victoria A. Crawshaw, David Austin Hilton, Morrison Mahoney LLP, Boston, MA; Stephen M. O'Shea, Martin Magnuson McCarthy & Kenney, Boston, MA.

For DOES 1 THROUGH 100, Defendant: Joan T. Kennedy, MA Dept of Corrections, Legal Division, Boston, MA.

For UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL, Defendant: Stephen M. O'Shea, Martin Magnuson McCarthy & Kenney, Boston, MA.

For LUIS S. SPENCER, [*2] Commissioner of the Department of Corrections, Defendant - Appellant: Joan T. Kennedy, Richard Charles McFarland, MA Dept of Corrections, Legal Division, Boston, MA.

For ARTHUR K. BREWER, Defendant: Victoria A. Crawshaw, David Austin Hilton, Morrison Mahoney LLP, Boston, MA.

For MA FAMILY INSTITUTE, Interested Party - Amicus Curiae: Andrew David Beckwith, Massachusetts Family Institute, Woburn, MA.

For WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, CALLEN-LORDE COMMUNITY HEALTH CENTER, WHITMAN-WALKER HEALTH, GLMA: HEALTH PROFESSIONALS ADVANCING LGBT EQUALITY, MAZZONI CENTER, MENTAL HEALTH AMERICA, Interested Party - Amicus Curiae: Cori A. Lable, Daniel V. McCaughey, Ropes & Gray LLP, Boston, MA.

For AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, AMERICAN CIVIL LIBERTIES UNION, LEGAL AID SOCIETY, HARVARD PRISON LEGAL ASSISTANCE PROJECT, PRISONERS' LEGAL SERVICES OF NEW YORK, PRISONERS' LEGAL SERVICES, Interested Party - Amicus Curiae: Joshua A. Block, American Civil Liberties Union Foundation, New York, NY; David C. Fathi, American Civil Liberties Union, Washington, DC; Matthew R. Segal, American Civil Liberties Union of Massachusetts, Boston, MA.

Judges: Before Lynch, Chief Judge, Torruella, [*3] Howard, Thompson and Kayatta, Circuit Judges.

Opinion

ORDER OF COURT

A majority of the active judges having voted to rehear this case en banc, the petition for rehearing en banc is granted. In accordance with customary practice, the panel opinion and the dissent released on January 17, 2014, are withdrawn, and the judgment entered on the same date is vacated. See 1st Cir. I.O.P. X(D).

The parties have filed briefs and the en banc court will have copies of those briefs. However, the parties are free to file supplemental briefs, not to exceed 25 pages per side. Such briefs should be filed simultaneously on or before March 14, 2014. Amici are welcome to file amicus briefs, also not to exceed 25 pages per brief, on the same schedule, but must seek prior leave of court. Supplemental briefs by the parties and amicus briefs must comply with applicable rules concerning format, service, and other requirements.

Any reply briefs, whether by the parties or by amici given permission to file a brief, must be filed no later than 7 days

after the principal supplemental briefs are filed. Reply briefs are limited to 15 pages.

Fourteen paper copies of all briefs filed should be provided to the Clerk's Office no later [*4] than one business day after the electronic brief is filed.

The en banc hearing is scheduled for May 8, 2014 at 9:30 a.m., En Banc Courtroom, 7th Floor, John Joseph Moakley Courthouse, Boston, Massachusetts.